IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.940 OF 1999
IN
WRIT PETITION NO.2696 OF 1994

Rajendra V. Shirgaonkar ....Appellant

V/s.

The General Manager,
The BEST Undertaking & Anr. ....Respondents

WITH

APPEAL NO.941 OF 1999
IN
WRIT PETITION NO.2460 OF 1994

Rajendra V. Shirgaonkar ....Appellant

V/s.

1. The Municipal Corporation of
Greater Bombay ....Respondent
No.1 (Ori.Pet.)

2. BEST Kamgar Union & Ors. ....Respondents

Mr.Kiran S. Bapat for the Appellant.

Mr.A.V. Bukhari with Mrs.P.N. Vora i/b Crawford Bayley for Respondent No.1.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 28TH APRIL, 2005.

P.C. :

. The Appellant was employed as an Assistant Fitter with effect from 6.12.1980 with the first Respondent - BEST Undertaking. The Appellant was chargesheeted by the first Respondent under Standing Orders No.20(a) and 20(zf), applicable to the BEST Undertaking. The said Standing Orders read as follows :-

> "20(a). Willful disobedience or insubordination whether along or in combination with another or others to any lawful and reasonable order of a superior",
>
> 20(zf). Willful slowing down in performance of work either by himself or in a company with others or abatement of or instigation in such slowing down or wrongful interference with the work of others."

. The charge against the Appellant was that he along with others had threatened the loyal employees of the first Respondent - Undertaking and prevented turn out of busses from Colaba Depot causing inconvenience to the BEST Undertaking and losses to Respondent No.1 Undertaking.

. The Trying Officer, after consideration of the available evidence on record and plea of the Appellant held the Appellant guilty of the charges under Standing Orders 20(a) and 20(2p) and ordered dismissal of the Appellant with effect from 25.3.1985. The Appellant challenged the order of dismissal by filing two Interlocutory Appeals which were also dismissed.

. Thereafter the Appellant addressed a letter of approach to the first Respondent and filed an application being Application (BIR) No.373 of 196 before the Labour Court under the Bombay Industrial Relations Act. The Labour Court framed the issues and after hearing the parties held that the enquiry conducted against the Appellant was fair and proper and the findings of the enquiry officer were not perverse. However, the Labour Court found that the punishment of dismissal was shockingly disproportionate and accordingly set aside the order of dismissal and allowed the Application partly and ordered reinstatement of the Appellant with continuity of service with effect from 25.3.1985 but without back wages. The order passed by the Labour Court was challenged by the Appellant as well as the first

Respondent. The Appellant's Appeal was registered as as Appeal (IC) No.74 of 1993 whereas the first Respondent's Appeal was registered as Appeal (IC) No.77 of 1993. The Industrial Court in the aforesaid Appeals by its order dated 5.8.1994 rejected the Appeal of the first Respondent but partly allowed the Appeal of the Appellant and ordered reinstatement of back wages with continuity of service and 50% back wages.

. Against the order of the Industrial Court, both parties filed the Writ Petitions in this Court. Writ Petition No.2460 of 1994 was at the instance of the first Respondent aggrieved by the judgment of the Industrial Court whereby the Court directed reinstatement of the Appellant with 50% back wages. While Writ Petition No.2696 of 1994 was by the Appellant aggrieved by refusal of 50% of back wages by the Industrial Court while directing his reinstatement with continuity of service.

. The learned single Judge inter-alia held that in the facts of the case, punishment of dismissal was grossly disproportionate with the misconduct proved against the Appellant and observed thus :-

"It is true that the present employee was a member of the group of 8 to 10 employees who visited the Colaba Depot in the intervening night of 13th and 14th June, 1983. However, none of the witnesses produced by the employer deposed before the enquiry officer that the employee took any part in violence or was in any manner active. None of the witnesses deposed that the employee abused any officer. There is no evidence of any over act or active participation by the employee except that he was member of the group of 8 to 10 persons who assembled at Colaba depot in the night of 13th/14th June, 1983. The learned counsel for the employer submitted that the employee had hardly put in service of three years and few months and, therefore, his past record is not relevant. If past record of the employee is excluded, as is contended by the learned counsel for employer, obviously in relation to the present incident in which employee had no active participation nor the employee caused any violence nor abused any of its officers nor gave any threats to any of the employees or officers nor caused any damage to the

property, I am satisfied that the view taken by the Labour Court was imminently just and proper and deserve to be resorted. For the misconduct proved against the employee, denial of back wages from 25.3.1985 would be sufficient punishment. I am in agreement with the view taken by the Labour Court that the punishment of dismissal was grossly disproportionate with the misconduct proved against the employee." (emphasis supplied)

. In the light of the above finding, the learned single Judge disposed of the Writ Petition in terms of the following order :-

"(i) The finding recorded by the Industrial Court that the misconduct/charges against the employee were not proved, is set aside.

(ii) The order passed by the Industrial Court directing 50% back wages to the employee is set aside.

(iii) The order passed by the 1st Labour Court on 26.7.1993 is restored and the employer is directed to reinstate the

employee with continuity of service immediately without back wages." (emphasis supplied)

. Mr.Kiran Bapat, learned counsel appearing for the Appellant strenuously contended that the Appellant was not at all involved in any act of misconduct, which would call any harsh punishment of complete denial of back wages to the Appellant. He submitted that the learned single Judge having recorded the finding that there is no evidence against the Appellant of any overt act or active participation by him in the disruption of buses, there was no justification whatsoever to deny him full back wages. According to him, the Appellant was out of employment since 1985 and that by itself being a punishment there was no need to inflict any further punishment upon the Appellant. In any event, according to Mr.Bapat the management of the first Respondent has completely misconstrued the order of the learned single Judge by denying the wages from the date of the order of the Labour Court till reinstatement. He urged that since the order of the Labour Court has been restored by the learned single Judge, the Appellant is entitled to wages from the date of the order of the Labour Court. On the other hand, Mr.Bukhari, learned counsel

appearing for the first Respondent submitted that having regard to the seriousness of misconduct and consequences thereof both on loyal employees undertakings and on the management, the back wages were rightly denied and the order of the learned single Judge does not require any interference. According to Mr.Bukhari, learned single Judge has denied back wages which means that the employee is not entitled to wages till the order of the learned single Judge. He submitted that pursuant to the order of the learned single Judge, the Appellant has been reinstated in service and has been paid wages from the date of the order of the learned single Judge.

. Having considered the submissions made by the learned counsel appearing for the parties we are in agreement with the view taken by the learned single Judge that the order of the Labour Court denying the back wages to the appellant is proper and correct. In our opinion the Labour Court has rightly held that in the facts and circumstances of the case denial of the back wages would be sufficient punishment and, therefore, the appellant would not be entitled to any back wages prior to the date of the order of the Labour Court. However, we do not see any justification for denying the wages to the appellant

after the order of the Labour Court. By virtue of the order of the learned single Judge, the order of the Labour Court stands restored and consequently the appellant would be entitled to wages from the date of the said order till reinstatement. Merely because the matter was pending in this court for some time does not mean that the management can refuse the wages for the said period when the matter was pending in this court. We therefore direct the respondents to release the wages of the appellant from the date of the Labour Court order till the date of reinstatement within a period of four weeks from today.

. Appeals are accordingly disposed of. No order as to costs.